

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

In the Matter of: )  
 )  
Western Pacific Railroad )  
Oroville, California ) U.S. EPA CERCLA  
 ) Docket No. 98-11  
 )  
 )  
RESPONDENT: )  
 )  
UNION PACIFIC RAILROAD COMPANY )  
 )  
Proceeding Under Section 106(a) )  
of the Comprehensive Environmental )  
Response, Compensation, and )  
Liability Act of 1980, )  
42 U.S.C. § 9606(a)). )  
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ADMINISTRATIVE ORDER  
FOR REMEDIAL ACTION

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#### **LIST OF ATTACHMENTS**

A. Statement of Work

I. AUTHORITY

This Administrative Order ("Order") is issued on this date pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 ("CERCLA"). The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-8-A and 14-14-C. This authority has been redelegated to the Director, Hazardous Waste Management Division, EPA, Region 9 ("Director") by Region 9 Delegations 1290.41 and 1290.42.

II. PARTIES BOUND

1. This Order shall apply to and be binding upon Union Pacific Railroad Company ("UPRR"), and its agents, successors and assigns. No change in ownership or operational status will alter Respondent's obligations under this Order. Respondent shall provide a copy of this Order to all contractors, subcontractors, and consultants who are retained by Respondent to perform the work required by this Order, within five (5) days after the

Effective Date of this Order or within five (5) days of retaining their services. Notwithstanding the terms of any other contract or agreement, Respondent is responsible for compliance with this Order and for ensuring that its employees, contractors, and agents comply with this Order.

2. Respondent may not convey any title, easement, or other interest it may have in any property comprising the Site, as the term "Site" is defined below, without a conveyance provision permitting the continuous implementation of the provisions of this Order and ensuring that the property will not be used in a manner inconsistent with use restrictions incorporated in the Site remedy, as more specifically addressed in paragraph 38 below. In the event Respondent transfers any title, easement, or other interest it may have in any property comprising the Site, Respondent shall provide a copy of this Order to any subsequent owner(s) or successor(s) before any ownership rights are transferred. Respondent shall advise U.S. EPA at least thirty (30) days in advance of any anticipated transfer of property interest.

### III. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA and/or in such regulations. Whenever the terms listed

below are used in this Order, or in the Exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments & Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

"Contractor" shall mean Respondent's contractor(s) and subcontractor(s) contracted to perform the installation/construction of, and operation and maintenance relating to, specific response actions required under the Order.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies.

"Fueling Area" shall mean the approximately 10 acre area within the Site where railyard fueling and maintenance operations historically took place, as depicted in Figure 2 of EPA's September 30, 1997 ROD.

"Identified Contamination" shall mean any

contamination, or threat of contamination, resulting from the release, or threat of release, of any hazardous substances, pollutants, contaminants, or solid waste identified in the administrative record for the Site up through EPA's September 30, 1997 issuance of its Record of Decision for the Site.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

"Order" shall mean this Administrative Order, EPA CERCLA docket number 98-11, and all attachments hereto. In the event of a conflict between the main body of this Order and any attachment, the main body of the Order shall control.

"Paragraph" shall mean a portion of this Unilateral Order identified by an Arabic numeral.

"Parties" shall mean the United States and UPRR.

"Record of Decision" shall mean the document EPA issued on September 30, 1997 selecting the final remedial action for the Site.

"Response actions" shall be those specific work items Respondent is required to perform at the Site pursuant to this Order, as set forth in Attachment A to this Order.

"Respondent" shall mean Union Pacific Railroad Company.

"Section" shall mean a portion of this Order identified

by a Roman numeral and including one or more paragraphs.

"Site" shall mean the Western Pacific Railroad Superfund Site, Oroville, Butte County, California, EPA ID# CAD980894679.

"SOW" shall mean the Statement of Work for implementation of the remedial action as set forth in Attachment A to this Order and any subsequent modifications made pursuant to this Order.

"State" shall mean the State of California, and all of its political subdivisions, including the California Department of Toxic Substances Control ("DTSC").

"Unfenced Area" shall mean the approximately 27 acre area within the Site formerly used as a railroad marshalling yard and a lumber transfer station, as depicted in Figure 2 of EPA's September 30, 1997 ROD.

"United States" shall mean the United States of America.

#### IV. FINDINGS OF FACT

##### Site Description

4. The Western Pacific Railroad Superfund Site is located at the southern end of the City of Oroville in Butte County, California. The Site is approximately 90 acres and consists of two distinct areas separated by the main railroad tracks. The western portion of the rail yard, known as the "Pond Area,"



includes a former surface impoundment, and the eastern portion, known as the "Fueling Area," includes the former fueling, servicing and maintenance areas.

5. The Site is located in a mixed-use area, with a residential area located directly across Baggett Marysville Road to the east and industrial areas to the north, west and south. The Koppers Company, Inc., Superfund site is located one mile southwest of the Western Pacific Superfund Site.

6. On the Site just west of the Fueling Area is a public drinking water supply well. Union Pacific Railroad leases this well to California Water Service which has taken it out of service until further notice from UPRR.

#### Site History and Operations

7. Western Pacific Railroad ("WPRR") first developed the Site in the late 1880s to repair, service and clean railcars. Specific activities included welding, machining, fabricating and fueling of locomotives. Subsequently, various structures were built, including a roundhouse and turntable, concrete inspection pits, a fueling area, storage tanks and an oil-water separator.

8. In 1970, Solano Railcar Company ("Solano") leased the roundhouse area from WPRR. Solano's primary activities included sandblasting, painting, welding and machining railcars. The roundhouse reportedly burned to the ground in 1976.

9. In 1982, Respondent acquired Western Pacific Railroad

and continued to lease to Solano. Solano continued to operate an independent rail car repair and maintenance facility at the Site until 1990, when it filed for bankruptcy.

10. A former surface impoundment west of the railroad tracks in the Pond Area received wastewater, grease and oil and may have received solvents from the fueling area operations. The discharge of wastewater into the surface impoundment, an unlined pond, took place from the 1950s until 1987.

11. An underground storage tank in the southeast section of the Fueling Area held waste oil and solvents. This tank was removed in 1989 by UPRR.

#### Enforcement History

12. In 1986, the California Regional Water Quality Control Board, Central Valley Region ("RWQCB") listed the surface impoundment as a toxic pit under the Toxic Pits Cleanup Act. UPRR complied with the RWQCB request to stop discharging to the pond. Four monitoring wells were installed in the pond area by Union Pacific Railroad.

13. In 1989, the RWQCB issued an order to UPRR and Solano to close the waste pond, remove all of the soil in it and clean up all contaminated soil around the fueling area. A waste classification study of the waste pond sludge found that the material contained arsenic, barium, copper, nickel and chromium; total petroleum hydrocarbons ("TPH") up to 13,000 mg/kg; and

benzene, toluene, phenanthrene, acetone, methylene chloride and chlorobenzene. Background concentrations of metals in soils were not determined.

14. In late 1989, UPRR excavated the soil and residues from the pond and backfilled the pond with soil from off-site.

15. The Western Pacific Railroad Site was placed on the EPA National Priorities List in August 1990.

16. In August 1993, UPRR entered into an Administrative Order on Consent with EPA to conduct a removal action to contain and clean up a small VOC plume near the former underground storage tank southeast of the roundtable.

17. In March 1994, UPRR entered into an Administrative Order on Consent with EPA to conduct a remedial investigation and feasibility study ("RI/FS") for the Site.

18. Subsequent to UPRR's performance of the RI/FS, EPA selected a final remedial action for the Site in its Record of Decision issued on September 30, 1997. This Order implements that action.

#### Respondent

19. Respondent UPRR is a Delaware corporation and is the owner and operator of the Western Pacific Railroad Superfund Site.

#### Threat to Public Health or Welfare or the Environment

20. In 1986, the presence of detectable levels of

chlorinated compounds in the California Water Supply ("CWS") drinking water well led to a RWQCB directive to UPRR to investigate potential contaminants in soil and groundwater in the Fueling Area. Results of the investigation revealed the presence of volatile organic compounds ("VOCs") in groundwater. Lead and chromium were detected above federal and State of California Maximum Contaminant Levels ("MCLs") in unfiltered groundwater samples. Metals have not been detected above MCLs in filtered groundwater samples, and naturally occurring background metals concentrations have not been determined.

21. In 1989, an underground storage tank ("UST") was removed; it contained toluene, dichlorobenzene ("1,4 DCB" and "1,2, DCB") and trichloroethylene ("TCE"). A monitoring well near the UST detected elevated levels of VOCs, primarily 1,1-dichloroethylene (1,1-"DCE") and, in one or two sampling events, low levels of aromatic hydrocarbons, including benzene, toluene, ethyl benzene and xylene were also detected.

22. The CWS drinking water supply well is located 650 feet in a generally downgradient direction (west) from the site of the UST. The VOC plume associated with the UST is assumed to be located in the same aquifer as and pose a threat to the CWS well.

23. The remedial investigation identified areas in the Fueling Area where the soil is contaminated with polycyclic aromatic hydrocarbons (PAHS). The current levels of

benzo(a)pyrene (B(a)P), the most toxic PAH, are well above U.S. EPA Region 9's preliminary remediation goal for a residential land use scenario. (U.S. EPA Region 9's PRGS, August 1996).

V. CONCLUSIONS OF LAW

24. The Western Pacific Railroad Site is a "facility" as defined in Section 101 (9) of CERCLA, 42 U.S.C. § 9601 (9).

25. Respondent is a "person" as defined in Section 101 (21) of CERCLA, 42 U.S.C. § 9601 (21).

26. Chemicals and their constituents at the Site are "hazardous substances" as defined in Section 101 (14) of CERCLA, 42 U.S.C. § 9601(14).

27. The past, present, and potential migration of hazardous substances from the Site constitutes an actual or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

28. Respondent is the "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

VI. DETERMINATIONS

29. The Director of the Superfund Division, U.S. EPA Region IX, has determined that an actual or threatened release of hazardous substances from the Site owned by Respondent may present an imminent and substantial endangerment to the public

health or welfare or the environment.

30. The actions required by this Order are necessary to protect the public health, welfare and the environment.

31. If performed satisfactorily, the actions required by this Order are consistent with the National Contingency Plan, 40 C.F.R. Part 300 ("NCP").

VII. NOTICE TO THE STATE

32. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a), U.S. EPA has notified the State of California of the issuance of this Order by providing the RWQCB and the California DTSC a copy of this Order.

VIII. WORK TO BE PERFORMED

A. General Provisions:

33. All work shall be conducted in accordance with: the applicable portions of EPA's Record of Decision, issued September 30, 1997; CERCLA; the NCP; U.S. EPA Region 9 "Guidance for Preparing Quality Assurance Project Plans for Superfund Remedial Projects" (EPA, November 1992); any final amended or superseding versions of such documents provided by U.S. EPA; other applicable U.S. EPA guidance documents; and any report, document or deliverable prepared by U.S. EPA because Respondents fail to comply with this Order.

34. All plans, schedules, and other reports that require U.S. EPA's approval and are required to be submitted by

Respondent pursuant to this Order, upon approval by U.S. EPA, are incorporated into and enforceable under this Order.

35. All work performed by or on behalf of Respondent pursuant to this Order shall be performed by qualified individuals and/or contractors with expertise in hazardous waste site remediation. The qualifications of the persons, contractors, and subcontractors undertaking the work for Respondent shall be subject to U.S. EPA review and approval.

36. U.S. EPA will oversee Respondent's activities as specified in Section 104(a)(1) of CERCLA Section, 42 U.S.C. §9604(a)(1). Respondent will support U.S. EPA's initiation and conduct of activities carried out in its oversight responsibilities. Respondent shall also cooperate and coordinate the performance of all work required to be performed under this Order with all other work being performed at the site, including work performed by U.S. EPA, the State, or any other party performing work at the site with the approval of EPA.

B. Work and Deliverables:

37. Respondent shall perform the tasks and submit the reports contained in the Remedial Action SOW (Attachment A). All such work shall be conducted in accordance with this Order including the SOW, CERCLA, the National Contingency Plan, and EPA Guidance.

38. Within ninety (90) days of the Effective Date of this

Order, Respondent shall submit a proposal for an effective institutional control that will restrict the use of the "unfenced area" and the "fueling area" within the Site to industrial use(s) only. The proposal shall be submitted to:

Kara Christenson (RC-2)  
Assistant Regional Counsel  
U.S. EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415/744-1330 Fax 415/744-1041

Within ninety (90) days of EPA's approval of Respondent's proposal for an institutional control, Respondent shall complete all steps for the control to be effective. Respondent shall further provide to the above a final recorded copy of the institutional control after it has been recorded.

39. Respondent shall notify U.S. EPA in writing of the name, title and qualifications of the individual(s) who will be responsible for carrying out the terms of this Order, and the name(s) of any contractor(s) or subcontractor(s). Notification shall be provided within five (5) days after the Effective Date of this Order, or, in the case of work which is within the scope of this Order for which no contractor(s) or subcontractor(s) has yet been selected, within seven (7) days of selection by Respondent.

40. If U.S. EPA disapproves in writing of any person's or contractor's technical and/or experience qualifications, U.S. EPA will notify the Respondent in writing, and Respondent shall



subsequently notify U.S. EPA within fourteen (14) days of Respondent's receipt of U.S. EPA's written notice of the identity and qualifications of the replacement(s). A subsequent U.S. EPA disapproval of the replacement(s) shall be deemed a failure to comply with the Order.

41. Subsequent to approval by U.S. EPA of the individual(s), contractor(s), or subcontractor(s) who will be responsible for the work required by this Order, Respondent may propose different individual(s), contractor(s) and/or subcontractor(s) to direct and supervise the work required by this Order. If Respondent wishes to propose such a change, the Respondent shall notify EPA in writing of the name, title, and qualifications of the proposed individual(s) and the name(s) of proposed contractor(s) and/or subcontractor(s). Any such individual(s), contractor(s) and/or subcontractor(s) shall be subject to approval by U.S. EPA. U.S. EPA shall give Respondent its approval or disapproval within fourteen (14) days of receiving from Respondent the information required by this paragraph. The naming of any replacement(s) by Respondent shall not relieve the Respondent of any of its obligations to perform the work required by this Order.

42. Respondent will notify U.S. EPA of field activities at least one (1) week before initiating them so that U.S. EPA may adequately schedule oversight tasks.

43. U.S. EPA shall review, comment, and approve or disapprove each plan, report, or other deliverable submitted by Respondent. All U.S. EPA comments on draft deliverables shall be incorporated or addressed, as appropriate, by the Respondent. U.S. EPA shall notify the Respondent in writing of EPA's approval or disapproval of a final deliverable. In the event of any disapproval, U.S. EPA shall specify the reasons for such disapproval, U.S. EPA's required modifications, and a time frame for submission of the revised report, document, or deliverable. If the modified report, document or deliverable is again disapproved by U.S. EPA, U.S. EPA shall first notify Respondent and then may draft its own report, document or deliverable and incorporate it as part of this Order, and/or seek penalties from Respondent for failing to comply with this Order, and/or conduct the remaining work required by this Order.

44. All documents, including technical reports, and other correspondence to be submitted by Respondent pursuant to this Order, shall be sent to the addressees in the following paragraph, or to such other addressees as U.S. EPA hereafter may designate in writing, and shall be deemed submitted on the date received by U.S. EPA. Respondent shall submit one (1) copy of each document to U.S. EPA, and one (1) copy to the California Regional Water Quality Control Board, Central Valley Region.

45. For purposes of this Order, U.S. EPA's authorized

representative shall be:

Holly Hadlock (SFD-7-1)  
Project Manager  
U.S. EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 744-2244

IX. OTHER APPLICABLE LAWS

46. Respondent shall undertake all actions required by this Order in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided under CERCLA or unless the Respondent obtains a variance or exemption from the appropriate governmental authority.

X. RECORD PRESERVATION

47. Respondent shall maintain, during the pendency of this Order, and for a minimum of ten (10) years after U.S. EPA provides notice to Respondent that the work has been completed, a central depository of the records and documents required to be prepared under this Order. In addition, Respondent shall retain copies of the most recent version of all documents that relate to hazardous substances at the Site and that are in its possession or in the possession of its employees, agents, contractors, or attorneys. After this ten-year period, Respondent shall notify U.S. EPA at least thirty (30) days before the documents are scheduled to be destroyed. If U.S. EPA so requests, Respondent shall provide these documents to U.S. EPA.

XI. DESIGNATED PROJECT MANAGERS

48. U.S. EPA designates Holly Hadlock, an employee of Region IX of U.S. EPA, as its project manager. Her authority includes, but is not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Order and/or undertake any response actions (or portions of the response action) when conditions present or may present a threat to public health or welfare or the environment as set forth in the NCP. Within fifteen (15) days of the Effective Date of this Order, Respondent shall designate a Project Manager who shall be responsible for overseeing Respondent's implementation of this Order. Holly Hadlock will be U.S. EPA's designated representative at the site. To the maximum extent possible, all oral communications between Respondent and U.S. EPA concerning the activities performed pursuant to this Order shall be directed through U.S. EPA's and Respondent's Project Managers. All documents, including progress and technical reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be delivered in accordance with Paragraph 31 above.

49. U.S. EPA and Respondent may change their Project Managers by notifying the other party in writing at least seven (7) days prior to the change, except in the case of an emergency, in which case notification shall be made orally followed by

written notification as soon as possible.

50. Consistent with the provisions of this Order, the U.S. EPA designates Michael Montgomery as an alternate project manager in the event EPA's project manager is unavailable. During such times, the alternate shall have the authority vested in the EPA's project manager as set forth in paragraph 48 above.

51. The unavailability of U.S. EPA's project manager shall not be cause for the stoppage of work. Nothing in this Order shall limit the authority of the U.S. EPA project manager under federal law.

XII. MODIFICATION OF WORK REQUIRED

52. In the event of unanticipated or changed circumstances at the Site that would materially impact the effectiveness of the remedy, Respondent shall notify the U.S. EPA Project Manager by telephone within twenty-four (24) hours of discovery of the new or changed circumstances. This verbal notification shall be followed by written notification postmarked within three (3) days of discovery of the new or changed circumstances.

53. The Director of the Superfund Division, U.S. EPA Region IX, may determine that in addition to tasks addressed herein, additional work may be required. Where consistent with Section 106(a) of CERCLA, the Director of the Superfund Division, U.S. EPA Region IX, may direct as an amendment to this Order that Respondent perform these response actions in addition to those

required herein. Respondent shall implement the additional tasks which the Director of the Superfund Division, U.S. EPA Region IX, identifies. The additional work shall be completed according to the standards, specifications, and schedules set forth by the Director of the Superfund Division, U.S. EPA Region IX in any modifications to this Order.

XIII. SITE ACCESS

54. Respondent shall permit U.S. EPA and its authorized representatives to have access at all times to the Site to monitor any activity conducted pursuant to this Order and to conduct such tests or investigations as U.S. EPA deems necessary. Nothing in this Order shall be deemed to limit U.S. EPA's authority under federal law to gain access to the Site.

55. To the extent that Respondent requires access to land other than land it owns in carrying out the terms of this Order, Respondent shall, within fifteen (15) days of the Effective Date of this Order, obtain access for U.S. EPA, its contractors and oversight officials; and state oversight officials and state contractors; and Respondent and its authorized representatives. If Respondent fails to gain access within fifteen (15) days, it shall continue to use best efforts to obtain access until access is granted. For purposes of this paragraph, "best efforts" includes but is not limited to, seeking judicial assistance, providing indemnification, and/or the payment of money as

consideration for access. If access is not provided within the time referenced above, U.S. EPA may obtain access under Sections 104(e) or 106(a) of CERCLA.

XIV. DELAY IN PERFORMANCE

56. Any delay in performance of any requirement of this Order that, in the U.S. EPA's judgment, is not properly justified by Respondent under the terms of this Section shall be considered a violation of this Order. Any delay in performance of any requirement of this Order shall not affect any other obligation of Respondent under the terms and conditions of this Order.

57. Respondent, as applicable, shall notify U.S. EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to U.S. EPA's Project Manager within twenty-four (24) hours after Respondent first knew or should have known that a delay might occur. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying U.S. EPA by telephone, the Respondent shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay.

Increased costs or expenses associated with implementation of the activities called for in this Order are not justifications for any delay in performance.

58. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect or extend the time to perform any of Respondent's obligations under this Order.

59. If U.S. EPA determines that good cause exists for an extension of time, it may grant a request made by Respondent pursuant to paragraph 58 above, and specify in writing to the Respondent the new schedule for completion of the activity and/or submission of the document for which the extension was requested.

XV. ENDANGERMENT AND EMERGENCY RESPONSE

60. In the event of any action or occurrence during the performance of the work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action(s) to prevent, abate, or minimize the threat, and shall immediately notify U.S. EPA's project manager, or, if the project manager is unavailable, U.S. EPA's alternate. If neither of these persons



is available, Respondent shall notify the U.S. EPA Emergency Response Unit, Region 9, phone number (415) 744-2000. Respondent shall take such action(s) in consultation with U.S. EPA's Project Manager and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan.

61. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances at or from the Site.

XVI. ASSURANCE OF ABILITY TO COMPLETE WORK

62. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondent shall submit to U.S. EPA a certification that Respondent or its contractor(s) and subcontractor(s) have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Respondent shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Order.

XVII. DISCLAIMER

63. The United States, by issuance of this Order, assumes

no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or its employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither U.S. EPA nor the United States shall be held as a party to any contract entered into by Respondent, or its employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XVIII. ENFORCEMENT AND RESERVATIONS

64. U.S. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. §9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondent. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight costs, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. §9607.

65. Notwithstanding any other provision of this Order, at any time during the response action, U.S. EPA may perform its own studies, complete the response action (or any portion of this response action) and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

66. Nothing in this Order shall preclude U.S. EPA from taking any additional enforcement action, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as U.S. EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. §9607(a), et seq., or any other applicable law. Respondent shall be liable under CERCLA Section 107(a), 42 U.S.C. §9607(a), for the costs of any such additional actions.

67. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Resource Conservation and Recovery Act, or any other applicable statutes or regulations.

68. Notwithstanding compliance with the terms of this Order, including the completion of a U.S. EPA-approved response actions, Respondent is not released from liability, if any, for any enforcement actions beyond the terms of this Order taken by U.S. EPA.

69. U.S. EPA reserves the right to take any enforcement action pursuant to CERCLA and/or any other legal authority, including the right to seek injunctive relief, monetary penalties, reimbursement of response costs, and punitive damages for any violation of law or this Order.

70. U.S. EPA expressly reserves all rights and defenses that it may have, including the U.S. EPA's right both to disapprove of work performed by Respondent and to require that Respondent perform tasks in addition to those detailed in this Order, as provided in Section VIII (Work to be Performed) of this Order.

71. This Order does not release Respondent from any claim, cause of action or demand in law or equity, including, but not limited to, any claim, cause of action, or demand which lawfully may be asserted by representatives of the United States or the State of California.

72. No informal advice, guidance, suggestions, or comments by U.S. EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain such formal approval as may be required by this Order.

XIX. REIMBURSEMENT OF OVERSIGHT COSTS

73. Respondent shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. U.S. EPA may submit to Respondent on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Respondent shall, within thirty (30) days of receipt of the bill, remit by check for the amount of

those costs made payable to the "Hazardous Substance Superfund,"  
to the following address:

U.S. Environmental Protection Agency  
Region 9, Attn: Superfund Accounting  
P.O. Box 360863M  
Pittsburgh, PA 15251

Respondent shall send a cover letter with any check and the letter shall identify the Western Pacific Railroad Site by name and make reference to this Order. Respondent shall send simultaneously to the U.S. EPA Project Manager notification of any amount paid, including a photocopy of the check.

74. Interest at the rate established under section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

XX. NOTICE OF INTENT TO COMPLY

75. Respondent shall, within seven (7) days of the Effective Date of this Order, provide written notice to U.S. EPA of Respondent's irrevocable intent to comply with this Order. Failure to respond, or failure to agree to comply with this Order, shall be deemed a refusal to comply with this Order.

XXI. OPPORTUNITY TO CONFER

76. Respondent may, within three (3) days of receipt of this Order, request a conference with the Chief of the Site Cleanup Branch in the Superfund Division, or whomever the Chief of the Remedial Action Branch may designate. If requested, the

conference shall occur within three (3) days of the request, unless extended by mutual agreement of the Parties, at U.S. EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.

77. At any conference held pursuant to Respondent's request, the Respondent may appear in person, or be represented by an attorney or other representative. If Respondent desires such a conference, the Respondent shall contact Kara Christenson, Assistant Regional Counsel, at U.S. EPA, Mail Code RC-2, 75 Hawthorne Street, San Francisco, California 94105, (415) 744-1330.

78. The purpose and scope of any such conference held pursuant to this Order shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondent intends to comply with this Order. If such a conference is held, the Respondent may present any evidence, arguments or comment regarding this Order, its applicability, any factual determinations upon which the Order is based, the appropriateness of any action which the Respondent is ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to U.S. EPA within three (3) days following the conference. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or

to seek resolution of potential liability, and no official stenographic record of the conference will be made. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within three (3) days following the Effective Date of this Order. Any such writing should be directed to Kara Christenson, Assistant Regional Counsel, at the above address.

79. Respondent is hereby placed on notice that U.S. EPA will take any action which may be necessary in the opinion of U.S. EPA for the protection of public health and welfare and the environment, and Respondent may be liable under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), for the costs of those government actions.

XXII. SEVERABILITY

80. If any provision or authority of this Order or the application of this Order to any circumstance is held by a court to be invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby, and the remainder of this Order shall remain in force.

XXIII. PENALTIES FOR NONCOMPLIANCE

81. Respondent is advised pursuant to Section 106(b) of

CERCLA, 42 U.S.C. Section 9606(b), that willful violation or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject Respondent to a civil penalty of up to \$27,500 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, without sufficient cause may also subject Respondent to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondent to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

XXIV. EFFECTIVE DATE

82. This Order is effective three (3) days following receipt by Respondent unless a conference is requested as provided herein. If such a conference is requested, this Order shall be effective the second (2nd) day following the day of such conference unless modified in writing by U.S. EPA.

XXV. TERMINATION AND SATISFACTION

83. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from U.S. EPA that Respondent has demonstrated, to the satisfaction of U.S. EPA, that all of the terms of this Order, including any additional



tasks which U.S. EPA has determined to be necessary, have been completed.

So Ordered, this 17 day of June, 1998.

By: Nancy Lindsay for KAT  
Keith A. Takata, Director  
Superfund Division  
U.S. Environmental Protection Agency, Region IX

## **ATTACHMENT A**

### **STATEMENT OF WORK REMEDIAL ACTION WESTERN PACIFIC RAILROAD SUPERFUND SITE**

#### **1.0 Introduction**

##### **1.1 Site Description**

The Western Pacific Railroad Superfund Site is a 90-acre parcel located at the southern end of the City of Oroville, California. The Site was used by the railroad for railcar and engine repair and maintenance. Union Pacific Railroad currently runs trains on the rail line that runs through the property. The subject of this Statement of Work is an approximately 1-acre area in the 10-acre Fueling Area.

The Fueling Area is bounded by industrial and commercial development to the north, west, and south and residences to the east. The residential community is within the jurisdiction of unincorporated Butte County.

##### **1.2 Purpose**

The purpose of this Statement of Work (SOW) is to set forth the requirements for implementing the soil remedy of the Record of Decision (ROD) issued on September 30, 1997. The Remedial Action phase of the site cleanup includes the development of plans and reports and the implementation of the remedy.

##### **1.3 General Requirements**

Union Pacific Railroad (UPRR) shall conduct the Remedial Action in accordance with this SOW and consistent with the ROD and all other appropriate guidance in conducting an RA, to the extent practicable. The primary contact for this Order is the EPA Remedial Project Manager (RPM), Holly Hadlock, Tel. (415) 744-2244; the secondary contact is the Section Chief, Michael Montgomery, Tel. (415) 744-2362.

##### **1.4 Time frames and Deadlines**

The Time frames and deadlines for the submission of each deliverable are listed in Attachment 1.

#### **2.0 Project Description**

The contaminated soil shall be excavated in the area shown on Figure 3 in the ROD. The soil shall be excavated to a depth of approximately one foot or to a depth whereby the residual mean soil concentration for B(a)P is 0.41 mg/kg or less. UPRR shall do confirmation sampling to ensure cleanup

ensure cleanup goals are attained. The excavated area shall be backfilled with clean fill. Dust emissions shall be controlled to minimize exposure for workers and nearby residents.

### **3.0 Project Planning**

The purpose of this task is to determine how the site-specific remediation goals, as specified in the ROD, will be met. The following activities shall be performed as part of the project planning and support task:

#### **3.1 Develop Remedial Action Work Plan**

UPRR shall prepare a Remedial Action Work Plan within 30 calendar days after the effective date of this Order. The Work Plan (WP) will include UPRR's technical and management approach to each task to be performed, including the transport and disposal of contaminated soil. The WP will explain how UPRR will comply with the Applicable or Relevant and Appropriate Requirements (ARARs) identified in the ROD. UPRR shall identify any contractors and subcontractors it plans to use to accomplish all or part of the RA. The WP shall also include a schedule with specific dates for the start and completion of each task and the submission of each deliverable.

#### **3.2 Develop Other Site-Specific Plans**

UPRR shall also prepare and submit other site-specific plans. UPRR shall utilize existing plans developed for the site, as appropriate.

3.2.1 Health and Safety Plan. A site-specific Health and Safety Plan (HASP) for the site must specify how workers will be protected during any site activities. The HASP must also provide an emergency response plan and must address health and safety requirements for site visitors.

3.2.2 Sampling and Analysis Plan. A Sampling and Analysis Plan for the Remedial Action must include the following components:

- (1) Field Sampling Plan. A Field Sampling Plan (FSP) must be prepared in accordance with the regional guidance document, "Preparation of the U.S. EPA Region 9 Field Sampling Plan for Private and State-Lead Superfund Projects," (EPA QAMS DCN 9QA-06-93, August 1993). The FSP must define the sampling and data collection methods that will be used for the

project. The FSP must include sampling objectives, sample locations, sampling equipment and procedures, allowance for split samples, sample handling, labeling, and analysis, as well as the supporting rationale for those decisions. The confirmation sampling done in accordance with the FSP must be statistically valid.

- (2) Quality Assurance Project Plan. A Quality Assurance Project Plan (QAPP) must be prepared in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations," (EPA QA/R-5, August 1994, latest draft or revision). The QAPP shall identify project technical and data quality objectives (DQOs); measurement or data acquisition methods are appropriate for achieving project objectives; assessment procedures are sufficient for confirming that data of the type and quality needed and expected are obtained; and any limitations on the use of the data are identified and documented.

#### **4.0 Sample Analysis and Data Validation**

##### **4.1 Sample Analysis**

Union Pacific shall describe in the Remedial Action Work Plan a discussion of the confirmation sampling, analysis and data validation. This analysis is required to ensure that cleanup goals established in the ROD are attained. The details of the sampling and analysis shall be discussed in the Sampling and Analysis Plan.

##### **4.2 Data Validation**

UPRR shall verify that the laboratory has completed the requested analyses and has submitted all sample data packages for third party validation. For purposes of this SOW, "third party" is defined as any party other than the entity performing the activity. Third party data validators shall validate the sample data packages in accordance with EPA's National Functional Guidelines for Data Review. UPRR shall provide EPA with the data validation reports for the analytical data received from the laboratory.

#### **5.0 Transportation and Disposal**

All contaminated soil and waste shall be transported and disposed of off-site in accordance with local, state and federal regulations, including EPA's "Off-Site Rule" (40 CFR §300.440, Procedures for planning and implementing off-site

response actions).

#### **6.0 Remedial Action Report**

UPRR shall submit a Remedial Action (RA) Report within 30 days of completion of on-site work for this Order. This report documents the cleanup activities that took place under remedial authority. The RA Report shall also certify that the cleanup standards have been met and other requirements in all applicable enforcement documents have been satisfied. The RA Report shall include discussions of the work completed on-site, the soil sampling, the analytical testing and the results, transportation and disposal of the contaminated soil, and any problems encountered and deviations from the work plan. UPRR and EPA shall jointly participate in a final site inspection to determine if all aspects of the remedial action have been implemented. The result of this final site inspection shall be discussed in the RA Report. A discussion about implementation of the institutional controls as required by the ROD shall be included.

#### **7.0 Five Year Review**

UPRR shall prepare a Five-Year Review Report. A five-year review is intended to evaluate whether the response actions remains protective of public health and the environment (CERCLA section 121(c) as amended and NCP section 300.430 (f) (4) (ii)). The review should focus on the effectiveness of the selected remedies and, if groundwater cleanup goals have not yet been achieved, on the performance of the extraction and treatment system for groundwater. The Report shall include a summary of recent technical data obtained from site monitoring, a discussion of site conditions, any problems or deficiencies, and recommendations to correct such deficiencies (see EPA OSWER Directive 9355.7-02, May 23, 1991 and other recent guidance).

**ATTACHMENT 1**  
**Summary of Deliverables**  
**Western Pacific Railroad Remedial Action**

<b>TASK</b>	<b>DELIVERABLE</b>	<b>DUE DATE</b>	<b>EPA REVIEW PERIOD</b>
3.1	RA Work Plan	30 days after effective date of order	10 days
3.2.1	Health and Safety Plan	14 days after effective date of order	NA
3.2.2	Sampling and Analysis Plan	14 days after effective date of order	10 days
6.0	Remedial Action Report	30 days after completion of remedial action	10 days
7.0	Five Year Review Report	5 years from RA start date	10 days